

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PENNSYLVANIA STATE	:	
CORRECTIONS OFFICERS	:	Case No. 16-1328
ASSOCIATION,	:	
	:	
<i>Petitioner</i>	:	
and	:	
	:	
NATIONAL LABOR RELATIONS	:	
BOARD,	:	
	:	
<i>Respondent</i>	:	

STATEMENT OF ISSUES TO BE RAISED

The National Labor Relations Board's ("NLRB" or "Board") Supplemental Decision and Order misapplies the law to the facts of the instant case, resulting in a remedy that is both contrary to Section 8(d) of the National Labor Relations Act ("Act"), as amended, and exceeds the scope of the Board's remedial powers under Section 10(c) of the Act. The Board erroneously devised a remedy that conflates the Transmarine backpay remedy, which the Board controls, and the Board-ordered effects bargaining, the substance of which, as a matter of law, the parties control. In doing so, the Board has imposed a remedy that is arbitrary, capricious, and manifestly contrary to the statute. Moreover, the Board's findings of fact in reaching its decision are not supported by substantial evidence on the record considered as a whole.

Pennsylvania State Corrections Officers Association intends to raise the following issues in support of its Petition for Review:

1. Whether the NLRB's remedy is manifestly contrary to the statute because:

a. it imposes substantive terms on parties in bargaining contrary to Section 8(d) of the National Labor Relations Act;

b. it exceeds the scope of the Board's remedial powers under Section 10(c) of the Act.

2. Whether the NLRB's decision is arbitrary and capricious because:

a. it conflates the remedies ordered (that Petitioner engage in effects-bargaining and provide a limited backpay remedy consistent with Transmarine) with the substance of Petitioner's effects-bargaining proposal;

b. it wrongly determined that Petitioner's effects-bargaining proposal was an effort to negotiate or renegotiate the Transmarine backpay remedy;

c. it wrongly determined that the April 11 impasse was unlawful;

d. it formulated a backpay obligation that exceeds the Board's authority and is contrary to longstanding principles and obligations under Transmarine;

e. it erred in applying the established law to the facts of the case.

3. Whether the NLRB's findings of fact are not supported by substantial evidence on the record considered as a whole because:

a. the record evidence establishes that Petitioner complied with the Judge's March 17, 2011 effects-bargaining order;

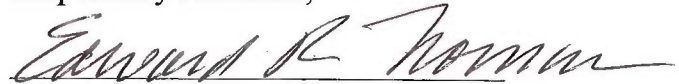
b. the record evidence establishes that Petitioner and the General Counsel stipulated that an impasse was reached on April 11, the impasse was lawful, and good faith bargaining was engaged in;

c. the Board misinterpreted Petitioner's severance pay proposal and bargaining negotiations;

d. the Board's finding that Petitioner attempted only to negotiate downward the Board-ordered backpay remedy is negated by the facts of record.

4. Whether the Board's determination that former employee Bill Parke did not fail to mitigate his damages and the position former employee Bill Parke declined was not substantially equivalent under the circumstances is arbitrary, capricious, contrary to the law and the statute and whether the findings of fact supporting the Board's determination are not supported by substantial evidence on the record considered as a whole.

Respectfully submitted,



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Dated: 10/24/16


CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2016, true and correct copies of the foregoing (1) CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES; (2) DOCKETING STATEMENT FORM; (3) STATEMENT OF INTENT TO UTILIZE DEFERRED JOINT APPENDIX; (4) STATEMENT OF ISSUES TO BE RAISED; (5) UNDERLYING DECISION FROM WHICH APPEAL OR PETITION ARISES; AND (6) ENTRY OF APPEARANCE have been filed with the Circuit's CM/ECF system. Counsel and other participants in the case who are registered users will be served by the CM/ECF system. Additionally, true and correct copies were sent this date by First Class, United States Mail, postage pre-paid as follows:

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